

CENTER FOR DISABILITY ACCESS  
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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

**Raul Uriarte,**

Plaintiff,

v.

**Valerie I. Castro;** and Does 1-10,  
Defendants.

**Case No.**

**Complaint For Damages And  
Injunctive Relief For** Violations  
Of: American's With Disabilities  
Act; Unruh Civil Rights Act;  
California Disabled Persons Act;  
Negligence

Plaintiff Raul Uriarte complains of Defendants Valerie I. Castro; and  
Does 1-10 ("Defendants") and alleges as follows:

**PARTIES:**

1. Plaintiff is a California resident with physical disabilities. He is a  
paraplegic who uses a wheelchair for mobility.

2. Defendants are, or were at the time of the incidents, the real property  
owners, business operators, lessors and/or lessees for Taqueria El Primo  
restaurant ("Restaurant") located at or about 9696 Fontana Avenue, Fontana,  
California.

1       3. Plaintiff does not know the true names of Defendants, their business  
2 capacities, their ownership connection to the property and business, or their  
3 relative responsibilities in causing the access violations herein complained of,  
4 and alleges a joint venture and common enterprise by all such Defendants.  
5 Plaintiff is informed and believes that each of the Defendants herein,  
6 including Does 1 through 10, inclusive, is responsible in some capacity for  
7 the events herein alleged, or is a necessary party for obtaining appropriate  
8 relief. Plaintiff will seek leave to amend when the true names, capacities,  
9 connections, and responsibilities of the Defendants and Does 1 through 10,  
10 inclusive, are ascertained.

11  
12       **JURISDICTION & VENUE:**

13       4. This Court has subject matter jurisdiction over this action pursuant to  
14 28 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the Americans  
15 with Disabilities Act of 1990, 42 U.S.C. § 12101, et seq.

16       5. Pursuant to pendant jurisdiction, an attendant and related cause of  
17 action, arising from the same nucleus of operative facts and arising out of the  
18 same transactions, is also brought under California's Unruh Civil Rights Act,  
19 and the California Disabled Persons Act, which acts expressly incorporate the  
20 Americans with Disabilities Act.

21       6. Venue is proper in this court pursuant to 28 U.S.C. § 1391(b) and is  
22 founded on the fact that the real property which is the subject of this action is  
23 located in this district and that Plaintiff's cause of action arose in this district.

24  
25       **FACTUAL ALLEGATIONS:**

26       7. The Plaintiff went to the Restaurant in February of 2015 to eat.

27       8. The Restaurant is a facility open to the public, a place of public  
28 accommodation, and a business establishment.

1       9. Parking is one of the facilities, privileges and advantages offered by  
2 defendants to their customers at the Restaurant.

3       10. Unfortunately, although parking is one of the facilities specifically  
4 reserved for patrons of the Restaurant, there is not a single compliant parking  
5 space reserved for persons with disabilities available. Instead, the Restaurant  
6 places tables on the location where the old parking space reserved for use by  
7 persons with disabilities used to be. The placement of the tables has now  
8 made it so that there are no parking spaces for use by persons with  
9 disabilities.

10       11. Defendants have no policy or procedure in place to make sure that the  
11 accessible parking spaces remain useable in the parking lot. As such, the  
12 parking space reserved for persons with disabilities is no longer available.

13       12. Additionally, the transaction counter is 46 inches in height. There is no  
14 lowered, 36 inch portion of counter for use by persons in wheelchairs. The  
15 pick-up counter, meanwhile, is 42 inches in height.

16       13. Restrooms are one of the facilities, privileges and advantages offered  
17 by defendants to their customers at the Restaurant.

18       14. The restroom doorway clear passage width was 29 inches and  
19 inaccessible to wheelchair users.

20       15. The restroom provides a toilet. However, instead of providing two grab  
21 bars on adjacent or parallel walls for use by persons with disabilities who  
22 need to transfer to the toilet, there are no grab bars.

23       16. The plaintiff personally encountered these problems. This inaccessible  
24 condition denied the plaintiff full and equal access and caused him difficulty  
25 and frustration.

26       17. Plaintiff would like to return and patronize the Restaurant but will be  
27 deterred from visiting until the defendants cure the violation.

28       18. The defendants have failed to maintain in working and useable

1 conditions those features required to provide ready access to persons with  
2 disabilities.

3 19. Given the obvious and blatant violations, the plaintiff alleges, on  
4 information and belief, that there are other violations and barriers on the site  
5 that relate to his disability. Plaintiff will amend the complaint, to provide  
6 proper notice regarding the scope of this lawsuit, once he conducts a site  
7 inspection. However, please be on notice that the plaintiff seeks to have all  
8 barriers related to his disability remedied. See *Doran v. 7-11*, 506 F.3d 1191  
9 (9th Cir. 2007) (holding that once a plaintiff encounters one barrier at a site,  
10 he can sue to have all barriers that relate to his disability removed regardless  
11 of whether he personally encountered them).

12 20. Additionally, on information and belief, the plaintiff alleges that the  
13 failure to remove these barriers was intentional because: (1) these particular  
14 barriers are intuitive and obvious; (2) the defendants exercised control and  
15 dominion over the conditions at this location and, therefore, the lack of  
16 accessible facilities was not an “accident” because had the defendants  
17 intended any other configuration, they had the means and ability to make the  
18 change.

19  
20 **I. FIRST CAUSE OF ACTION: VIOLATION OF THE AMERICANS**  
21 **WITH DISABILITIES ACT OF 1990** (On behalf of plaintiffs and against all  
22 defendants (42 U.S.C. section 12101, et seq.)

23 21. Plaintiff repleads and incorporates by reference, as if fully set forth  
24 again herein, the allegations contained in all prior paragraphs of this  
25 complaint.

26 22. Under the ADA, it is an act of discrimination to fail to ensure that the  
27 privileges, advantages, accommodations, facilities, goods and services of any  
28 place of public accommodation is offered on a full and equal basis by anyone

1 who owns, leases, or operates a place of public accommodation. See 42  
2 U.S.C. § 12182(a). Discrimination is defined, *inter alia*, as follows:

- 3 a. A failure to make reasonable modifications in policies, practices,  
4 or procedures, when such modifications are necessary to afford  
5 goods, services, facilities, privileges, advantages, or  
6 accommodations to individuals with disabilities, unless the  
7 accommodation would work a fundamental alteration of those  
8 services and facilities. 42 U.S.C. § 12182(b)(2)(A)(ii).
- 9 b. A failure to remove architectural barriers where such removal is  
10 readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). Barriers are  
11 defined by reference to the ADAAG, found at 28 C.F.R., Part 36,  
12 Appendix “D.”
- 13 c. A failure to make alterations in such a manner that, to the  
14 maximum extent feasible, the altered portions of the facility are  
15 readily accessible to and usable by individuals with disabilities,  
16 including individuals who use wheelchairs or to ensure that, to  
17 the maximum extent feasible, the path of travel to the altered  
18 area and the bathrooms, telephones, and drinking fountains  
19 serving the altered area, are readily accessible to and usable by  
20 individuals with disabilities. 42 U.S.C. § 12183(a)(2).

21 23. Any business that provides parking spaces must provide handicap  
22 parking spaces. 1991 Standards § 4.1.2(5); 2010 Standards § 208. One in  
23 every eight of those handicap parking spaces but not less than one must be a  
24 “van” accessible parking space, *i.e.*, having an eight foot access aisle. 1991  
25 Standards § 4.1.2(5)(b). Under the 2010 Standards, one in every six  
26 accessible parking spaces must be van accessible. 2010 Standards § 208.2.4.

27 24. Here, the lack of any accessible, compliant parking is a violation of the  
28 law.

1       25. In areas used for transactions where counters have cash registers and  
2       are provided for sales or distribution of goods or services to the public, at least  
3       one of each type shall have a portion of the counter which is at least 36 inches  
4       in length with a maximum height of 36 inches above the floor. 1991  
5       Standards § 7.2(1); 2010 Standards § 904.

6       26. Here, no accessible transaction counter has been provided.

7       27. All doors to restrooms must have a minimum clear opening of 32  
8       inches with the door open 90 degrees, measured between the face of the door  
9       and the opposite stop. 1991 Standards § 4.22.2; 4.13.5; 2010 Standards §  
10      404.2.3.

11      28. Here, the failure to provide the 32 inch wide restroom doorway  
12      opening is a violation of the ADA.

13      29. For a toilet to be considered accessible under the ADA, there must be  
14      two grab bars on walls adjacent to the toilet to assist persons with disabilities  
15      to transfer to the toilet. 1991 Standards § 4.16.4; 2010 Standards § 604.5.

16      30. Here, the failure to provide compliant grab bars is a violation.

17      31. A public accommodation must maintain in operable working condition  
18      those features of its facilities and equipment that are required to be readily  
19      accessible to and usable by persons with disabilities. 28 C.F.R. § 36.211(a).

20      32. Here, the failure to ensure that the accessible facilities were available  
21      and ready to be used by the plaintiff is a violation of the law.

22      33. Given its location and options, the Restaurant is a business that the  
23      plaintiff will continue to desire to patronize but he has been and will continue  
24      to be discriminated against due to the lack of accessible facilities and,  
25      therefore, seeks injunctive relief to remove the barriers.

1 **II. SECOND CAUSE OF ACTION: VIOLATION OF THE UNRUH CIVIL**  
 2 **RIGHTS ACT** (On behalf of plaintiffs and against all defendants) (Cal Civ §  
 3 51-53)

4 34. Plaintiff repleads and incorporates by reference, as if fully set forth  
 5 again herein, the allegations contained in all prior paragraphs of this  
 6 complaint.

7 35. Because the defendants violated the plaintiff's rights under the ADA,  
 8 they also violated the Unruh Civil Rights Act and are liable for damages. (Civ.  
 9 Code § 51(f), 52(a).)

10 36. Because the violation of the Unruh Civil Rights Act resulted in  
 11 difficulty, discomfort or embarrassment for the plaintiffs, the defendants are  
 12 also each responsible for statutory damages, i.e., a civil penalty. (Civ. Code §  
 13 55.56(a)-(c).)

14  
 15 **III. THIRD CAUSE OF ACTION: VIOLATION OF THE CALIFORNIA**  
 16 **DISABLED PERSONS ACT** (On behalf of plaintiffs and against all  
 17 defendants) (Cal Civ. § 54-54.8)

18 37. Plaintiff repleads and incorporates by reference, as if fully set forth  
 19 again herein, the allegations contained in all prior paragraphs of this  
 20 complaint.

21 38. Because the defendants violated the plaintiffs' rights under the ADA,  
 22 they also violated the Disabled Persons Act and are liable for damages. (Civ.  
 23 Code § 54.1(d), 54.3(a).)

24 39. Because the violation of the Disabled Persons Act resulted in difficulty,  
 25 discomfort or embarrassment for the plaintiffs, the defendants are also each  
 26 responsible for statutory damages, i.e., a civil penalty. (Civ. Code § 55.56(a)-  
 27 (c).)

1 **IV. FOURTH CAUSE OF ACTION: NEGLIGENCE** (On behalf of plaintiff  
2 and against all defendants)

3 40. Plaintiff repleads and incorporates by reference, as if fully set forth  
4 again herein, the allegations contained in all prior paragraphs of this  
5 complaint.

6 41. The Defendants had a general duty and a duty arising under the  
7 Americans with Disabilities Act and the Unruh Civil Rights Act and  
8 California Disabled Persons Act to provide safe, convenient, and accessible  
9 facilities to the plaintiffs. Their breach of this duty, as alleged in the preceding  
10 paragraphs, has caused injury and damage as alleged above.

11  
12 **PRAYER:**

13 Wherefore, Plaintiff prays that this court award damages and provide  
14 relief as follows:

15 1. For injunctive relief, compelling defendants to comply with the  
16 Americans with Disabilities Act and the Unruh Civil Rights Act. Note: the  
17 Plaintiffs are not invoking section 55 of the California Civil Code and is not  
18 seeking injunctive relief under the Disabled Persons Act at all.

19 2. Damages under the Unruh Civil Rights Act and/or the California  
20 Disabled Persons Act which damages provide for actual damages and a  
21 statutory minimum of \$4,000. Note: a plaintiff cannot recover under both  
22 acts, simultaneously, and an election will be made prior to or at trial.



1           3. Reasonable attorney fees, litigation expenses and costs of suit,  
2 pursuant to 42 U.S.C. § 12205; Cal. Civ. Code §§ 52 and 54.3.

3  
4 Dated: February 24, 2015

CENTER FOR DISABILITY ACCESS

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6 By: \_\_\_\_\_  
7 Mark Potter, Esq.  
8 Attorneys for Plaintiff  
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